THE LEGISLATIVE ASSEMBLY OF
BRITISH COLUMBIA

SPECIAL COMMITTEE TO APPOINT AN OMBUDSMAN

REPORT

SECOND SESSION, THIRTY-EIGHTH PARLIAMENT

APRIL 2006

106-0 5650 /

National Library of Canada Cataloguing in Publication Data

British Columbia. Legislative Assembly. Special Committee to Appoint an Ombudsman.

Report

At head of title: The Legislative Assembly of British Columbia.

"Second Session, Thirty-eighth Parliament."

ISBN 0-7726-5539-1

1. British Columbia. Office of the Ombudsman - Officials and employees - Selection and appointment. I. Title. II. Title: Special Committee to Appoint an Ombudsman report.

JL429.5.04B74 2006 352.8'809711 C2006-960070-8

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April 26, 2006

To the Honourable,
The Legislative Assembly of the
Province of British Columbia
Victoria, British Columbia

Honourable Members:

I have the honour to present herewith the *Report* of the Special Committee to Appoint an Ombudsman.

The *Report* covers the work of the Committee from November 22, 2005 to April 26, 2006.

Respectfully submitted on behalf of the Committee.

John Rustad, MLA
Chair

Leonard Krog, MLA
Deputy Chair

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COMPOSITION OF THE COMMITTEE

MEMBERS

John Rustad, MLA	Chair	Prince George-Omineca
Leonard Krog, MLA	Deputy Chair	Nanaimo
Ron Cantelon, MLA		Nanaimo-Parksville
Mary Polak, MLA		Langley
Diane Thorne, MLA		Coquitlam-Maillardville

CLERK TO THE COMMITTEE

Craig James, Clerk Assistant and Clerk of Committees

COMMITTEE RESEARCHERS

Wynne MacAlpine, Research Analyst

Mary Storzer, Committee Researcher

TERMS OF REFERENCE

On November 21, 2005, the Legislative Assembly appointed a Special Committee to select and unanimously recommend the appointment of an Ombudsman, pursuant to Section 2 (2) of the *Ombudsman Act*. The Special Committee to Appoint an Ombudsman was reappointed on February 20, 2006 to continue its work during the 2nd Session of the 38th Parliament.

The Committee's terms of reference specify that:

... the said Committee shall have the powers of a Select Standing Committee and in addition is empowered:

(a) to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;

(b) to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;

(c) to adjourn from place to place as may be convenient; and

(d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

INTRODUCTION

The Ombudsman, a statutory officer of the Legislature, is an impartial, independent investigator of complaints concerning government administrative unfairness. The Ombudsman's two primary roles are to investigate complaints and to generally oversee the administrative actions of government authorities with a view to upholding the democratic principles of openness, transparency and accountability. The Ombudsman and his or her Office provide expertise in applying the principles of administrative and procedural fairness to reviews of decisions, recommendations made, acts done or omitted, or procedures used by public authorities in administering their duties.

The *Ombudsman Act* incorporates a Schedule listing the over 2,800 authorities under the Ombudsman's jurisdiction. Included are government ministries; Crown corporations; government-controlled commissions, boards and authorities; schools and school boards; universities, colleges and institutions; hospitals, hospital boards and local health authorities; local governments and many regional authorities; and self-governing professional and occupational bodies.

The Ombudsman is a statutory officer of the Legislature, which means that the position is independent of government and communicates directly to the Legislative Assembly through the Speaker. Section 2 (2) of the *Ombudsman Act* requires that a special committee of the Legislative Assembly unanimously recommend the appointment of a person to be the Ombudsman for the province. The Committee's recommendation must then be accepted by a majority of Members of the Legislative Assembly.

This report constitutes a recommendation to the Legislative Assembly for the appointment of the fifth Ombudsman of British Columbia.

SELECTION PROCESS

The Committee conducted eight meetings for the purposes described below:

Tuesday, November 22, 2005	Organization and Planning
Thursday, February 9, 2006	Briefing by Howard Kushner, Acting Ombudsman of British Columbia
Wednesday, March 8, 2006	Review of Selection Process
Tuesday, March 28, 2006	Subcommittee Candidate Screening
Wednesday, April 12, 2006	Approval of Shortlist
Friday, April 21, 2006	Candidate Interviews
Saturday, April 22, 2006	Candidate Interviews
Monday, April 24, 2006	Approval of Report to the House

APPLICATIONS

From February 24 to March 1, 2006, advertisements for the position of Ombudsman were placed in all major daily newspapers in British Columbia, and in one national newspaper.[1] The advertisement was also distributed electronically to 45 Canadian and international organizations having an interest in ombudsmanship, administrative law or dispute resolution. Prospective applicants were asked to apply by Friday, March 17, 2006.

In response, the Committee received 84 applications for the position of Ombudsman. Of the applications received, 74 were from residents of British Columbia and 10 were from residents of other Canadian provinces.

The Committee established a short list of six applicants, all of whom were subsequently interviewed by the Committee.

SELECTION CRITERIA

The Committee's selection criteria provided the basis for a Position and Candidate Profile and a Screening Matrix, which were used to assess each application and each interview. To ensure consistency and fairness, each interviewed candidate was asked a standard set of 15 interview questions. These questions were also developed from the Committee's selection criteria.

The Committee agreed that the Ombudsman of British Columbia must be a person of integrity, and have standing within his or her professional community. He or she must possess extensive knowledge of administrative and procedural fairness and conflict resolution, and have considerable professional experience in those areas. In addition, the Ombudsman must be an accomplished manager and leader, able to oversee a professional team and to articulate and promote an organizational vision for the Office of the Ombudsman. Equally important, the Ombudsman must be capable of serving as an impartial, effective public voice for the administrative fairness provisions of the *Ombudsman Act*.

Some of the specific criteria used by the Committee to assess applicants included:

- An understanding of the role of the Ombudsman in British Columbia and the general functions of an Ombudsman in a democratic society.
- An understanding of and commitment to the values of administrative fairness in the public sector.
- Knowledge of the principles of administrative law.
- Experience in consistently applying the principles of administrative fairness and conflict resolution to particular contexts.

[1] Vancouver Sun; Vancouver Province; Victoria Times Colonist; Prince George Citizen; Okanagan Saturday/Sunday; Alaska Highway News; Cranbrook Daily Townsmen; Kimberley Daily Bulletin; Peace River Block News; Nanaimo Daily News; National Post.

- The ability to establish and maintain an organizational profile of independence and impartiality, while also developing and maintaining good working relationships with authorities and the public.
- The ability to interact effectively with individuals at various occupational levels and with diverse backgrounds.
- The ability to recognize and anticipate organizational needs and to establish organizational goals.
- Strong leadership ability, including the ability to inspire others with enthusiasm and commitment; foster an organizational climate of professionalism, trust and respect; and otherwise positively influence the organizational climate.

RECOMMENDATION

The Committee unanimously recommends to the Legislative Assembly that Ms. Kim S. Carter be appointed Ombudsman for the Province of British Columbia, pursuant to section 2 (2) of the *Ombudsman Act*.

COMMITTEE REMARKS

The Committee is very pleased to recommend Ms. Carter for the position of Ombudsman. It was impressed with not only Ms. Carter's exceptional professional qualifications, but also her longstanding commitment to justice and her balanced, consensus-building approach. The Committee looks forward to seeing Ms. Carter bring a new perspective to the role of Ombudsman.

The Committee also recognizes that with the start of this new chapter comes the conclusion of the previous one – and a significant transition for the departing Ombudsman and the Office staff. The Committee sincerely thanks the incumbent Ombudsman of British Columbia, Howard Kushner, for his able and dedicated service to the province since 1999. The Committee recognizes that the accomplishments achieved through Mr. Kushner's leadership, particularly with respect to standardized procedures, performance measures, and organizational innovations will provide the Office with a strong foundation on which to build for some time to come.

BIOGRAPHICAL NOTES

Kim Carter has a broad background in criminal, international and administrative law. She has appeared as counsel before the Federal Court of Canada; the Court Martial Appeal Court of Canada; and the Supreme Court of Canada. She has worked in Canada and overseas in many capacities including as leader of the Canadian War Crimes Investigation Team responsible for conducting on-site war crimes investigations in the Former Republics of Yugoslavia for the United Nations Commission of Experts in 1993. She was also a member of the Canadian Delegation during negotiating sessions for the International Criminal Court in New York.

She attended Glendon College at York University for an undergraduate degree; received her law degree from Osgoode Hall Law School in 1979 and completed her Master's of Law at the University of Ottawa in 2005.

Kim served as a member of the Canadian Forces Reserves from 1975 to 1981 as a logistics officer. After her call to the bar in Ontario she transferred to the regular force as a legal officer. In addition to providing legal advice on a wide range of administrative issues, she acted variously as defence counsel, prosecutor and appellate counsel. She was the Director of International Law for the Canadian Forces from 1991 to 1995 and acted as Senior Canadian Forces Counsel during the Somalia Commission of Inquiry.

In 1999 then Colonel Carter was appointed the first independent Director of Military Prosecutions for the Canadian Forces. In 2001 she was appointed by Governor-in-Council as a military judge and in 2002 became Canada's first female Chief Military Judge.

ADVERTISEMENT

LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

Special Committee to Appoint an Ombudsman
John Rustad, MLA *Chair*, Leonard Krog, MLA *Deputy Chair*

Ombudsman

The Ombudsman is an expert in administrative and procedural fairness, mandated to administer the processes established by the *Ombudsman Act* ([RSBC 1996] CHAPTER 340) for investigating complaints about administrative actions or decisions of government ministries, Crown corporations, local governments, educational and health authorities, and the governing bodies of occupations and professions, and to generally uphold the democratic principles of accountability, openness, and fairness in government administrative decision-making.

The Ombudsman also manages the Office of the Ombudsman of British Columbia and its staff, which assists in carrying out the statutory responsibilities of the position.

The appointment is for a term of six years, and may be renewed. The salary for the position is equal to the salary paid to a Chief Judge of the Provincial Court of British Columbia.

The Ombudsman is a non-partisan, independent officer of the Legislature.

Applications should be received by e-mail no later than Friday, March 17, 2006. Applications will be held in confidence.

ADDRESS ALL INQUIRIES AND APPLICATIONS TO:

Craig James
Clerk Assistant and
Clerk of Committees
Room 224, Parliament Buildings
Victoria, BC V8V 1X4

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OMBUDSMAN ACT

[RSBC 1996] CHAPTER 340

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Definition

1 In this Act, **"authority"** means an authority set out in the Schedule or added under section 35 and includes members and employees of the authority.

Appointment of Ombudsman

2 (1) On the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to the Ombudsman under this Act.

(2) The Legislative Assembly must not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

Term of office

3 (1) The Ombudsman must be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsman must not hold another office or engage in other employment.

Remuneration

4 (1) The Ombudsman is entitled to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court.

(2) The Ombudsman must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging duties.

Pension

5 (1) Subject to subsection (2), the Public Service Pension Plan, continued under the *Public Sector Pension Plans Act*, applies to the Ombudsman.

(2) When calculating the amount of a pension under the Public Service Pension Plan, each year of service as Ombudsman must be counted as 1 1/2 years of pensionable service.

(3) [Repealed 2003-62-3.]

Resignation, removal or suspension

6 (1) The Ombudsman may at any time resign the office by written notice

(a) to the Speaker of the Legislative Assembly, or

(b) to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from British Columbia.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor must, in accordance with the recommendation,

(a) suspend the Ombudsman, with or without salary, or

(b) remove the Ombudsman from office.

(3) On the recommendation of the Legislative Assembly the Lieutenant Governor must appoint an acting Ombudsman if

(a) the Ombudsman is suspended or removed,

(b) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (4) (c), or

(c) the Ombudsman is temporarily ill or temporarily absent for another reason.

(4) The appointment of an acting Ombudsman under subsection (3) terminates

(a) on the appointment of a new Ombudsman under section 2,

(b) at the end of the period of suspension of the Ombudsman,

(c) immediately after the expiry of 30 sitting days after the commencement of the next session of the Legislature, or

(d) on the return to office of the Ombudsman from the temporary illness or absence whichever occurs first.

(5) If the Legislature is not sitting and is not ordered to sit within the next 5 days, the Lieutenant Governor in Council may suspend the Ombudsman from office, with or without salary, for cause or incapacity, but the suspension does not continue in force after the expiry of 30 sitting days.

Appointment of acting Ombudsman without recommendation of Legislature

7 (1) The Lieutenant Governor in Council may appoint an acting Ombudsman

(a) if

(i) the Ombudsman is suspended or removed, or

(ii) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but it does not make a recommendation under section 2 or 6 (3) before the end of that sitting or before an adjournment of the Legislature exceeding 5 days,

(b) if the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days, or

(c) if the Ombudsman is temporarily ill or temporarily absent for another reason.

(2) The appointment of an acting Ombudsman under subsection (1) terminates

(a) on the appointment of a new Ombudsman under section 2,

(b) at the end of the period of suspension of the Ombudsman,

(c) immediately after the expiry of 30 sitting days after the day on which the Ombudsman was appointed,

(d) on the appointment of an acting Ombudsman under section 6 (3), or

(e) on the return to office of the Ombudsman from temporary illness or absence, whichever occurs first.

Staff

8 (1) In accordance with the *Public Service Act,* the Ombudsman may appoint employees necessary to perform the duties of the office.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsman is a deputy minister.

(3) The Ombudsman may make a special report to the Legislative Assembly if the Ombudsman believes

(a) the amounts and establishment provided for the office of the Ombudsman in the estimates, or

(b) the services provided to the Ombudsman by the BC Public Service Agency are inadequate to enable the Ombudsman to fulfil the duties of the office.

Confidentiality

9 (1) Before beginning to perform the duties of the office, the Ombudsman must take an oath before the Clerk of the Legislative Assembly

(a) to faithfully and impartially exercise the powers and perform the duties of the office, and

(b) not to divulge any information received under this Act, except if permitted by this Act.

(2) A person on the staff of the Ombudsman must, before beginning to perform duties, take an oath before the Ombudsman not to divulge any information received under this Act except if permitted by this Act.

(3) For the purposes of subsection (2) the Ombudsman is a commissioner for taking affidavits for British Columbia.

(4) The Ombudsman and every person on the staff of the Ombudsman must, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in performing their duties under this Act.

(5) The Ombudsman or a person holding an office or appointment under the Ombudsman must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his or her knowledge in the exercise of duties under this Act, except

(a) to enforce the Ombudsman's powers of investigation,

(b) to enforce compliance with this Act, or

(c) with respect to a trial of a person for perjury.

(6) An investigation under this Act must be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(7) Despite this section, the Ombudsman may disclose or authorize a member of his or her staff to disclose a matter that, in the opinion of the Ombudsman, is necessary to

(a) further an investigation,

(b) prosecute an offence under this Act, or

(c) establish grounds for conclusions and recommendations made in a report under this Act.

Powers and duties of Ombudsman in administrative matters

10 (1) The Ombudsman, with respect to a matter of administration, on a complaint or on the Ombudsman's own initiative, may investigate

(a) a decision or recommendation made,

(b) an act done or omitted, or

(c) a procedure used by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsman may be exercised and performed despite a provision in an Act to the effect that

(a) a decision, recommendation or act is final,

(b) no appeal lies in respect of it, or

(c) a proceeding or decision of the authority whose decision, recommendation or act it is must not be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report.

(4) The Ombudsman must

(a) investigate the matter referred under subsection (3), so far as it is within the Ombudsman's jurisdiction and subject to any special directions, and

(b) report back as the Ombudsman thinks fit.

(5) Sections 23 to 26 do not apply in respect of an investigation or report made under subsection (4).

Jurisdiction of Ombudsman

11 (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised or until after the time limit for the exercise of that right has expired, or

(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsman may investigate conduct occurring before the commencement of this Act.

(3) If a question arises about the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, the Ombudsman may apply to the Supreme Court for a declaratory order determining the question.

Complaint to Ombudsman

12 (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint must be in writing.

(3) If a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman the person in charge of the institution, hospital or facility in which the writer is confined or the person having custody of the writer must immediately, mail or forward the communication, unopened, to the Ombudsman.

(4) A communication from the Ombudsman to a person confined or in custody as described in subsection (3) must be forwarded to that person in a similar manner.

(5) Subsections (3) and (4) apply despite any other enactment.

Refusal to investigate

13 The Ombudsman may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsman, any of the following apply:

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which the complaint refers more than one year before the complaint was received by the Ombudsman;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and, if the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for the failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint;

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved;

(g) the complainant has abandoned the complaint

(i) by failing to advise the Ombudsman of a current address or telephone number at which the Ombudsman can contact him or her, or

(ii) by failing to respond after a reasonable number of attempts by the Ombudsman to contact him or her in writing or verbally;

(h) the complaint is withdrawn by the complainant by notice to the Ombudsman;

(i) the complaint is settled under section 14.

Ombudsman to notify authority

14 (1) If the Ombudsman investigates a matter, the Ombudsman must notify the authority affected and any other person the Ombudsman considers appropriate to notify in the circumstances.

(2) At any time during or after an investigation the Ombudsman may consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) If before making a decision respecting a matter being investigated the Ombudsman receives a request for consultation from the authority, the Ombudsman must consult with the authority.

Power to obtain information

15 (1) The Ombudsman may receive and obtain information from the persons and in the manner the Ombudsman considers appropriate, and in the Ombudsman's discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsman may do one or more of the following:

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, talk in private with any person there and otherwise investigate matters within the Ombudsman's jurisdiction;

(b) require a person to furnish information or produce, at a time and place the Ombudsman specifies, a document or thing in the person's possession or control that relates to an investigation, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

(c) make copies of information furnished or a document or thing produced under this section;

(d) summon before the Ombudsman and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether

or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath;

(e) receive and accept, on oath or otherwise, evidence the Ombudsman considers appropriate, whether or not it would be admissible in a court.

(3) If the authority requests the return of a document or thing obtained under subsection (2), the Ombudsman must return it to the authority within 48 hours after receiving the request, but the Ombudsman may again require its production in accordance with this section.

Protection

16 A person must not discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act.

Opportunity to make representations

17 If it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman must, before deciding the matter,

(a) inform the authority or person of the grounds, and

(b) give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman.

Attorney General may restrict investigative powers

18 (1) The Ombudsman must not enter any premises and must not require any information or answer to be given or any document or thing to be produced if the Attorney General certifies that entering the premises, giving the information, answering the question or producing the document or thing might

(a) interfere with or impede the investigation or detection of an offence,

(b) result in or involve the disclosure of deliberations of the Executive Council, or

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest.

(2) The Ombudsman must report each certificate of the Attorney General to the Legislative Assembly not later than in the Ombudsman's next annual report.

Application of other laws respecting disclosure

19 (1) Subject to section 18, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 18 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter must not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 18 but despite subsection (2), if a person is bound to maintain confidentiality in respect of a matter only because of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), the person must disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 18, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person must, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

Privileged information

20 (1) Subject to section 19, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as the person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

Witness and information expenses

21 (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if the person were a witness in the Supreme Court.

(2) If a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

If investigation is refused or discontinued or complaint is not substantiated

22 (1) If the Ombudsman decides

(a) not to investigate or further investigate a complaint under section 13, or

(b) at the conclusion of an investigation, that the complaint has not been substantiated, the Ombudsman must

(c) record the decision in writing, and

(d) as soon as is reasonable, notify both the complainant and the authority of the decision and the reasons for it.

(2) The reasons provided under subsection (1) (d) with respect to a decision referred to in subsection (1) (b) must be in writing.

(3) The Ombudsman may indicate with the notification under subsection (1) (d) any other recourse that may be available to the complainant.

Procedure after investigation

23 (1) If, after completing an investigation, the Ombudsman is of the opinion that

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was

(i) contrary to law,

(ii) unjust, oppressive or improperly discriminatory,

(iii) made, done or omitted under a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory,

(iv) based wholly or partly on a mistake of law or fact or on irrelevant grounds or consideration,

(v) related to the application of arbitrary, unreasonable or unfair procedures, or

(vi) otherwise wrong,

(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority

(i) did so for an improper purpose,

(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter, or

(iii) was negligent or acted improperly, or

(c) there was unreasonable delay in dealing with the subject matter of the investigation, the Ombudsman must report that opinion and the reasons for it to the authority and may make the recommendation the Ombudsman considers appropriate.

(2) Without restricting subsection (1), the Ombudsman may recommend that

(a) a matter be referred to the appropriate authority for further consideration,

(b) an act be remedied,

(c) an omission or delay be rectified,

(d) a decision or recommendation be cancelled or changed,

(e) reasons be given,

(f) a practice, procedure or course of conduct be altered,

(g) an enactment or other rule of law be reconsidered, or

(h) any other steps be taken.

Authority to notify Ombudsman of steps taken

24 (1) If a recommendation is made under section 23, the Ombudsman may request the authority

(a) to notify the Ombudsman within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendation, or

(b) if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) If, after considering a response made by an authority under subsection (1), the Ombudsman believes it advisable to modify or further modify the recommendation, the Ombudsman must notify the authority of the recommendation as modified and may request that the authority notify the Ombudsman

(a) of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or

(b) if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

Report of Ombudsman if no suitable action taken

25 (1) If within a reasonable time after a request has been made under section 24 no action is taken that the Ombudsman believes adequate or appropriate, the Ombudsman, after considering any reasons given by the authority, may submit a report of the

matter to the Lieutenant Governor in Council and, after that, may make a report to the Legislative Assembly respecting the matter as the Ombudsman considers appropriate.

(2) The Ombudsman must attach to a report under subsection (1) a copy of the Ombudsman's recommendation and any response made to it under section 24, but the Ombudsman must delete from the recommendation and from the response any material that would unreasonably invade any person's privacy, and may delete material revealing the identity of a member, officer or employee of an authority.

Complainant to be informed

26 (1) If the Ombudsman makes a recommendation under section 23 or 24 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, the Ombudsman

(a) must inform the complainant of the recommendation and

(b) may make additional comments the Ombudsman considers appropriate.

(2) The Ombudsman must in every case inform the complainant within a reasonable time of the result of the investigation.

No hearing as of right

27 A person is not entitled as of right to a hearing before the Ombudsman except as provided in this Act.

Ombudsman not subject to review

28 Proceedings of the Ombudsman must not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

Proceedings privileged

29 (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything done in good faith, reported or said in the course of the exercise or purported exercise of duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceeding before the Ombudsman under this Act are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court, and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

Delegation of powers

30 (1) The Ombudsman may in writing delegate to a person or class of persons any of the Ombudsman's powers or duties under this Act, except the power

(a) to delegate under this section,

(b) to make a report under this Act, and

(c) to require a production or disclosure under section 19 (1).

(2) A delegation under this section is revocable at will and does not prevent the Ombudsman from exercising the delegated power at any time.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) If the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman through a delegation under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.

Annual and special reports

31 (1) The Ombudsman must report annually on the affairs of the Ombudsman's office to the Speaker of the Legislative Assembly.

(2) The Speaker must lay the report before the Legislative Assembly as soon as possible.

(3) If the Ombudsman considers it to be in the public interest or in the interest of a person or authority, the Ombudsman may make a special report to the Legislative Assembly or comment publicly about a matter relating generally to the exercise of the Ombudsman's duties under this Act or to a particular case investigated by the Ombudsman.

Offences

32 A person commits an offence who does any of the following:

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of a power conferred or a duty imposed under this Act;

(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;

(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of a power conferred or a duty imposed under this Act;

(d) violates an oath taken under this Act;

(e) contravenes section 16.

Other remedies

33 The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy, right of appeal or objection is provided, or

(b) a procedure is provided for inquiry into or investigation of a matter, and nothing in this Act limits or affects that remedy, right of appeal, objection or procedure.

Rules

34 (1) On its own initiative or on the recommendation of the Lieutenant Governor in Council the Legislative Assembly may make rules for the guidance of the Ombudsman in exercising the powers and performing the duties of the office.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine the Ombudsman's procedure and the procedure for the members of the Ombudsman's staff in exercising of the powers conferred and performing the duties imposed by this Act.

Additions to Schedule

35 The Lieutenant Governor in Council may, by order, add authorities to the Schedule.

Schedule
Authorities

1 Ministries of the government.

2 A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council,

(b) in the discharge of their duties, public officers or servants of the government, or

(c) responsible to the government.

3 A corporation the ownership of which or a majority of the shares of which is vested in the government.

4 Municipalities.

5 Regional districts.

6 The Islands Trust established under the *Islands Trust Act.*

7 Improvement districts as defined in the *Local Government Act.*

8 The Capital Improvement District under the *Capital Commission Act.*

9 Boards, committees, commissions or similar bodies established under the *Community Charter,* the *Local Government Act* or the *Vancouver Charter.*

10 The Resort Municipality of Whistler and the Whistler Resort Association.

11 A local trust committee, the Trust Council, the Trust Fund Board and the executive committee and persons to whom their powers are delegated under the *Islands Trust Act.*

12 Library boards as defined in the *Library Act.*

13 The Cultus Lake Park Board.

14 A greater board as defined in the *Community Charter.*

15 Development districts, water users' communities, comptroller and regional water manager under the *Water Act.*

16 The commissioners of a district defined in section 58 of the *Drainage, Ditch and Dike Act* and an engineer, commissioner, inspector of dikes or land settlement board acting under that Act.

17 The British Columbia Diking Authority and a diking authority under the *Dike Maintenance Act.*

18 The Okanagan Kootenay Sterile Insect Release Board.

19 Regional transit commissions established under the *British Columbia Transit Act.*

20 A corporation

(a) more than 50% of the issued voting shares of which are owned by one or more of the authorities listed in section 4 to 19 or this section, or

(b) that is controlled by one or more of the authorities listed in section 4 to 19 and, for the purposes of ascertaining control, a corporation is controlled by one or more of these authorities if a majority of the members of the corporation or of its board of directors or board of management consists of either or both of the following:

(i) persons appointed as members by the authorities;

(ii) officers or employees of an authority acting as such.

21 Schools and boards as defined in the *School Act.*

21.1 Francophone education authorities as defined in the *School Act* and francophone schools operated by francophone education authorities.

22 Universities as defined in the *University Act.*

23 The University of Northern British Columbia.

23.1 The Thompson Rivers University.

24 Royal Roads University.

25 Institutions as defined in the *College and Institute Act.*

26 Hospitals and boards of management of hospitals as defined in the *Hospital Act.*

27 Governing bodies of professional and occupational associations that are established or continued by an Act.

28 Regional Health Boards established under the *Health Authorities Act.*

29 Regional Hospital Districts under the *Hospital District Act.*

30 [Repealed 2002-35-11.]

31 The Greater Vancouver Transportation Authority established under the *Greater Vancouver Transportation Authority Act.*

32 The Business Practices and Consumer Protection Authority established under the *Business Practices and Consumer Protection Authority Act.*

Municipal Pension Board of Trustees

Teachers' Pension Board of Trustees

Public Service Pension Board of Trustees

College Pension Board of Trustees

British Columbia Safety Authority established under the *Safety Authority Act*

Land Title and Survey Authority of British Columbia